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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,042	05/14/2001	David A. Solin	149-0161US	8654
29855 7590 04/18/2007 WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, L.L.P. 20333 SH 249 SUITE 600 HOUSTON, TX 77070			EXAMINER ROBINSON, GRETA LEE	
			ART UNIT 2168	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			04/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/855,042

Applicant(s)

SOLIN, DAVID A.

Examiner

Greta L. Robinson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-7 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-7 and 9-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 2-7 and 9-21 are pending in the present application.
2. Claims 3, 10, 15 and 19 have been amended.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 2-7, 9-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of claims are geared to an abstract idea that does not comprise a useful concrete tangible result for updating a computer system. Note the preamble of independent claim 3 recites "updating a computer system", *while* the body of the claim recites "**updating** the computer system responsive to at least **the first set of update information** received"; *however* the claim does not give an outcome for the limitation of "requesting a in a request additional update information responsive to at least the size of the first set of update information" [see claim 3 lines 4-7]. Note the claim limitation does not appear to update, see "wherein a difference in times between a performance of the receiving .... is **selected form**" lines 11-20. The claim omits operational procedures for the additional update information and does not specify what element is performing a selection. The limitations of independent claim 10 are parallel claim 3, and is therefore rejected for

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similar reasons. Regarding independent claims 5, 12 and 19, the claim does not specifically recite an "updating step" for the second and third set of update information. Also independent claim 15 does not specifically recite **performing an updating function** (note limitation "selected from" line 20) of the computer system; and omits limitation as to procedures for **exceeding a storage amount** [see claim 15 lines 1-4; also note specification page 25 lines 20-22]. Claims 2, 4, 6, 7, 9, 11, 13, 14, 20 and 21 are rejected based on dependency.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2-7 and 9-21 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: Regarding claims 2-7, 9-14, and 19-21 the claim omits **channel index** [see page 2-3, and page 9 lines 3-23], also the **installer/deleter 214**, **holding area manager 222** appears to be important elements of the embodiments of the invention note Figures 2-3 page detailed description of specification. Regarding claims 15-18 the claims appear to omit steps taken or a **procedure for exceeding a storage amount** [see claim 15 lines 1-4; page 25 lines 20-22, also page 2 lines 8-13].

***Response to Arguments***

7. Applicant's arguments filed February 2, 2007 have been fully considered but they are not persuasive. In the response Applicant argued with respect to the rejection cited under 35 USC 101 claims 3, 10, 12, 15, and 19 are directed to statutory subject matter because they each achieve a useful, concrete tangible result of updating the computer system. Applicant states the claims have been amended to make clear the use of first, second, and third as used in the claims; however the examiner respectfully maintains the rejection. Note Applicant has substituted the limitation "additional update information" however there is no correspondence with respect to updating. Also the limitation "at least one selected from" does not concretely infer an operational procedure for selecting in order to update the system. Applicant's remarks concerning the rejection cited under 35 USC 112 first paragraph are found persuasive; therefore the rejection has been withdrawn. Claims 2-7 and 9-21 were rejected under 35 USC 112 second paragraph for omitting essential elements; however Applicant argued that nowhere in the specification have applicants explicitly defined any element as essential. In response to Applicant's remarks the examiner respectfully maintains the rejection. Note the examiner has pointed to specific sections of the disclosure regarding elements found essential, see rejection supra.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (571)272-4118. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim T. Vo can be reached on (571)272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



GRETA ROBINSON  
PRIMARY EXAMINER

Greta Robinson  
Primary Examiner  
April 14, 2007